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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,269	06/30/1999	KEITH T. CHU	99RSS196	1021
1200	7590	06/17/2004	EXAMINER	
AKIN, GUMP, STRAUSS, HAUER & FELD 711 LOUISIANA STREET SUITE 1900 SOUTH HOUSTON, TX 77002			EBRAHIMI DEHKORDY, SAEID	
			ART UNIT	PAPER NUMBER
			2626	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/345,269

Applicant(s)

CHU, KEITH T.

Examiner

Saeid Ebrahimi-dehKordy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claim 1-21 have been considered but are moot in view of the new ground(s) of rejection

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,7,11,15-17 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al (U.S. patent 6,587,473) in view of Lauffenburger et al (U.S. patent 6,590,897)

Regarding claim 1,7,11 and 15 Terry et al disclose: A communications system configured for network latency recovery comprising: an Internet protocol network (please note Fig.1 column 5 lines 26-45) a calling modem coupled to the Internet protocol network (please note Fig.1 item 16, column 5 lines 11-20) the calling modem being operable to compare the network latency value to a network latency threshold (please note Terry et al, column 16 lines 3-24) to transmit a low speed modem connection selection signal if the network latency value is greater than the network latency threshold (please note Terry et al, column 16 lines 20-33) and to transmit a high speed modem connection selection signal if the network latency value is less than the network latency threshold (please note Terry et al, column 16 lines 33-42)

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and an answering modem coupled to the internet protocol network, the answering modem being operable to receive the low speed modem connection signal and the high speed modem connection signal (please note column 16 lines 20-42). However Terry et al do not disclose: the calling modems including a timer the timer being operable to store a network latency value. On the other hand Lauffenburger et al disclose: the calling modem including a timer (please note Lauffenburger et al, Fig.4 item 166, column 16 lines 9-11 and specifically line 10 item 310 time register which acts as the timer for the modem) the timer being operable to store a network latency value (please note Lauffenburger et al, column 19 lines 53-64).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Terry et al's invention according to the teaching of Lauffenburger et al, where Lauffenburger et al in the same field of endeavor teach the way the communication data is being transmitted between the master and slave modems where the data is being managed based on the network bandwidth and network speed for the purpose of making the network latency less of the factor.

Regarding claim 16 Terry et al disclose: The method of claim 15, further comprising the step of: establishing a low speed modem connection if the network latency is greater than the network latency threshold (please note column 16 lines 20-41).

Regarding claim 17 Terry et al disclose: The method of claim 16, further comprising the step of: providing a low speed modem selection signal if the network

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latency is greater than the network latency threshold to indicate to perform the establishing a low speed modem connection step (please note column 16 lines 20-24)

Regarding claim 20 Terry et al disclose: The method of claim 15, further comprising the step of: providing a high speed modem selection signal to indicate to perform the continuing operation step if the network latency is less than the network latency threshold (please note column 16 lines 20-41).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3,5,9,13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al (U.S. patent 6,587,473) in view of Lauffenburger et al (U.S. Patent 6,590,897) and further in view of Schuster (U.S. patent 6,483,600)

Regarding claim 2 neither Terry et al nor Lauffenburger et al disclose: The communications system of claim 1, further comprising: a calling facsimile terminal coupled to the calling modem and an answering facsimile terminal coupled to the answering modem, On the other hand Schuster et al disclose: a calling facsimile terminal coupled to the calling modem and an answering facsimile terminal coupled to the answering modem (please note column 7 lines 33-67 and column 8 lines 1-13).

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Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Terry et al and Lauffenburger et al's invention according to the teaching of Schuster et al, Schuster et al in the same field of endeavor teach generally , both the transmitting modem and receiving fax modems must process data at the same rate in order to communicate thus by measuring the threshold of the network on the receiving modem side to the sending modem side.

Regarding claim 3 Schuster et al disclose: The communications system of claim 1, wherein a T.38 calling gateway includes the calling modem and a T.38 answering gateway includes the answering modem (please note column 5 lines 65-67 and column 6 lines 1-4).

Regarding claims 5,9,13 and 18 Schuster et al disclose: The communications system of claim 1, wherein the low speed modem connection comprises a Group 3 connection on the other hand (please note column 5 lines 45-67 and column 6 lines 1-5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims Claim 4,6,8,10,12,14,19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al (U.S. patent 6,587,473) in view of Lauffenburger et al (U.S. patent 6,590,897) and further in view of Yoshida et al (U.S. patent 6,437,870)

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Regarding claims 4,8,12 and 19 Neither Lauffenburger et al nor Terry et al teach the use of the protocols V.8 or V.34 On the other hand in the same filed of endeavor Yoshida et al disclose: The communications system of claim 1, wherein the high speed modem connection comprises a V.8 modem connection (please note column 3 lines 17-43 and column 4 lines 56-64).

Therefore it would have been obvious to a person of ordinary skill in art at the time of the invention to modify Terry et al and Lauffenburger et al invention according to the teaching of Yoshida et al, Yoshida et al in the same field of endeavor teach when V.8 facility is provided in the facsimile apparatus , it is necessary to attain communication capability with a facsimile apparatus having only a conventional T.30 protocol and communication capability with a facsimile apparatus which is not provided with the V.8 protocol.

Regarding claims 6,10,14 and 21 Yoshida et al disclose: The communications system of claim 1, wherein the high-speed modem connection comprises a V.34 half-duplex connection (please note column 4 lines 56-64).

Contact Information

- Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Saeid Ebrahimi-Dehkordy* whose telephone number is (703) 306-3487.

The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly Williams, can be reached at (703) 305-4863.

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Any response to this action should be mailed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

Or faxed to:

(703) 872-9306, or (703) 308-9052 (for **formal** communications; please
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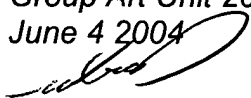
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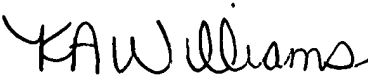
(703) 306-5406 (for **informal** or **draft** communications, please label
"PROPOSED" or "DRAFT")

Hand delivered responses should be brought to Crystal Park II, 2121 Crystal
Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application should be
directed to the Group Receptionist whose telephone number is (703) 305-4750.

Saeid Ebrahimi-Dehkordy
Patent Examiner
Group Art Unit 2626
June 4 2004




KIMBERLY WILLIAMS
SUPERVISORY PATENT EXAMINER